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ARTICLE APPEARED
ON PAGE 22THE NEW YORK TIMES
26 January 1977

Dirty Tricks Under Law

So many different and normally clashing interests coalesced in the riptide that defeated the nomination of Theodore C. Sorensen to be Director of Central Intelligence that there are few clear lessons to be gleaned from the episode. But if anything seemed clear, it was that since the rule of law has still not been established with sufficient force over the darker aspects of the C.I.A., the attention given to the identity of the director is inordinate. As President Carter moves to make his second selection for the Directorship, he should bear in mind the yet more urgent need: to regularize covert activities and place them under the law. The nation needs greater protection than the good instincts of whichever person finally lands in the director's chair.

Secretary of State Vance made some interesting observations about the black arts of the intelligence business during his recent confirmation hearings. With the shocking revelations of the Senate Select Committee on Intelligence obviously still much on his mind, Mr. Vance outlined how to achieve substantially tighter control over such programs.

For openers, Mr. Vance would limit covert activities to what he termed "the most extraordinary circumstances." Then he would construct a tight chain of responsibility for such operations—that they be approved by a committee composed of the Secretary of State, the Secretary of Defense, the Attorney General and the President's National Security Adviser. On top of that, Mr. Vance would add clear Presidential responsibility: "I think that the President of the United States himself should sign off in writing, saying that he believes this vital to the national security." Finally, the Vance plan would require that the appropriate Congressional committee be notified of the plan in advance so that members of Congress could make their views known to the President before any action is taken.

Mr. Vance's proposal represents a substantial movement toward governmental responsibility, though it

falls short of the demand by some critics that covert action be abolished entirely. The problem, in the critics' eyes, is that covert operators and Presidents alike have been able to wield major—and unaccountable—power. The result has been a two-tiered foreign policy: one that was understood and generally approved by the Congress and the people and a second, unknown, unapproved, conducted out of sight and sometimes with grotesque ends in mind—overthrowing governments, conspiring with mobsters to assassinate a foreign chief of state, trying to poison all the pigs in Cuba.

Cuba's pigs, as a matter of fact, provide an excellent example of what the critics despise about covert action. Newsday not long ago reported that in 1971, C.I.A. introduced African swine virus—which, unlike swine flu, affects only pigs—into Cuba. Some 500,000 pigs had to be slaughtered to prevent a nationwide pig epidemic. If true, the story raises a host of prototypical questions. Whose nutty idea was this? Who approved it? Did anyone, or was it simply the work of operatives foraging in a never-never land in which neither law nor morality is clear?

There should be a national judgment, in the form of legislative action by Congress, to determine whether the United States should continue to indulge in dirty tricks, and within what boundaries. We conclude with Mr. Vance, that however bad a name covert actions may have achieved over the past few years, the world is still dangerous enough and untidy enough to justify them in "the most extraordinary circumstances." But the "tight controls" that Mr. Vance has recommended should be specified by Congress.

The legislation should clarify the legality of covert operations, detail the steps necessary for their initiation and approval, and provide criminal sanctions for violations. That should solve many of the most difficult problems. It is hard to imagine a President or even a Cabinet committee member actually signing his name to documents approving a Cuban pig episode.